IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 216 of 2007

Date of decision: 5.9.2007

Jagdish Chander ... Petitioner

Versus

State of H.P. & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Bimal Gupta, Advocate.

For the respondents: Mr. M.S. Chandel, Advocate General with Mr. Ashutosh Burathoki, Additional Advocate General, for respondents No. 1 and 4 to 6.

Mr. Bhuvnesh Sharma, Advocate for respondents No. 2 and 3. .

Per V.K. Ahuja, J. :

This is a writ petition filed by the petitioner under Articles 226 and 227 of the Constitution of India for quashing order passed by the Financial Commissioner (Appeals), Shimla, H.P. dated 30.10.2006.

Briefly stated the facts of the case are that the petitioner vide sale deed dated 3.12.1982 purchased 2/3rd share in land comprised in Khasra Nos. 271,272,273 and 270 measuring 0-06-88 Hectares from one Shri Gian Chand. The mutation dated 11.1.1984 was attested on the basis of sale deed by the Assistant Collector. The mutation was reviewed and cancelled on 22.1.1988 by the Assistant Collector. The

[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

petitioner filed an appeal before the Sub Divisional Collector against the order of review who accepted the appeal on 18.4.1988 and set aside the order passed by the Assistant Collector, 2nd Grade, Dharamshala. On appeal, the Divisional Commissioner, Kangra Division, vide his order dated 30.10.1991 accepted the appeal and remanded the case to the Collector, Kangra. The District Collector vide order dated 22.1.1994 sent the case to Divisional Commissioner for obtaining final order from the Financial Commissioner observing that the land comprised in Khasra No. 273 being Kharetar could not have been purchased without the prior permission of the State Government under Section 118 of the H.P. Tenancy and Land Reforms Act. The said order was upheld by the Divisional Commissioner vide his order dated 25.4.1995 and he forwarded the case to the Financial Commissioner for consideration. The Financial Commissioner(Appeals) vide his impugned order dated 30.10.2006 observed that the petitioner had purchased the land comprised in Khasra Nos. 271 and 272 while the Civil Court had declared him to be the owner of Khasra Nos. 270 and 273 also. Insofar as the mutation regarding Khasra Nos. 271 and 272 was concerned, it was not set aside, but qua the land comprised in Kasra No. 273, it was observed that the petitioner shall have to obtain permission under Section 118 of the H.P. Tenancy and Land Reforms Act to purchase the land in his name and the State Government shall consider the application if filed by the petitioner.

We have gone through the orders passed by the various authorities including the Financial Commissioner's order under challenge. A perusal of the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act shows that no non–agriculturist can purchase the agriculture land except with permission of the State Government which is

necessary, therefore, it was for the petitioner to have applied for permission before getting mutation sanctioned in his favour. A perusal of the record of the case also shows that the petitioner made various representations to the State Government for permission and he was conveyed vide order dated 2.5.2001 by the Deputy Commissioner, Kangra, that his application for permission to purchase the land has been rejected by the State Government on 17.4.2001. Thereafter, again the petitioner had been making representations to the Chief Minister and other authorities. But suffice to say that cause of action had arisen to the petitioner to challenge the order passed on 2.5.2001 say within a period of one year from the date of the order which was never done and after the case has been decided by the Financial Commissioner on 30.10.2006, he has challenged the order of the Financial Commissioner but not of the State Government rejecting his application for grant of permission. The order passed by the learned Financial Commissioner does not suffer from any illegality and does not call for an interference by this Court and as such, there is no merit in the writ petition filed by the petitioner, which is dismissed accordingly with no order as to costs.

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In view of the dismissal of the main petition, the order dated 2.3.2007 shall stand vacated and the application stands disposed of.

(Deepak Gupta),
Judge

(V.K. Ahuja),
Judge

September 5, 2007
(BSS)